

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUAN ALONSO, ABELARDO ARIAS, JAIME LOPEZ, RON
MENIN, LUIS NARANJO, HECTOR OLVERA, PEDRO
ORTIZ, LEONARDO PRIETO, ARKADY SHTEYNBERG,
VICTOR SOLIS, ALEJANDRO TORRES, LUIS XURUC, and
IVAN ZAPATA, on behalf of themselves and all others similarly
situated,

08 Civ. 7813 (DAB)
ECF FILED

Plaintiffs,

-against-

UNCLE JACK'S STEAKHOUSE, INC., UNCLE JACK'S OF
BAYSIDE INC., UNCLE JACK'S STEAKHOUSE
FRANCHISE INC., UNCLE JACK'S STEAKHOUSE
MIDTOWN INC., WILLIAM J. DEGEL, THOMAS
CARPENTER, and DENNIS BOROSOWSKI,

Defendants.

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**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE SEEKING AN ORDER PRECLUDING EVIDENCE
RELATING TO PLAINTIFFS' IMMIGRATION STATUS**

Valli Kane & Vagnini LLP
Attorneys for Defendants
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PRELIMINARY STATEMENT

Defendant's Uncle Jack's Steakhouse, Inc. ("UJ 34th Street), Uncle Jack's of Bayside, Inc. ("UJ Bayside"), Uncle Jack's Steakhouse Midtown, Inc. ("UJ Midtown") (collectively "Uncle Jack's"), William J. Degel, and Thomas Carpenter (collectively with "Defendants") respectfully submit this Memorandum of Law in Opposition to Plaintiffs' Motion *in Limine* seeking an order precluding Defendants from offering evidence relating to Plaintiffs' immigration status. Defendants do not wish to offer evidence relating to Plaintiffs' immigration status but rather wish to be permitted to introduce evidence concerning Plaintiffs' falsification of employment documents as a means for impeaching Plaintiffs' credibility.

STATEMENT OF FACTS

The case before this Court alleges violations of the Fair Labor Standards Act and New York Labor Law. Plaintiffs allege that Defendants failed to pay their employees minimum wages, overtime wages, spread of hours pay, and uniform allowances. Plaintiffs also allege that Defendants misappropriated tips at their three restaurants.

In this case, Plaintiff Abelardo Arias lied to his employer on employment documents by failing to input a valid social security number in his employment application. Defendants seek to use this falsification of employment documents to attack Plaintiff's credibility and impeach the witness. Plaintiffs will testify at trial and, as such, evidence pertaining to Plaintiffs' credibility is highly relevant to the case.

In raising these facts at trial, Defendants do not intend on delving into the immigration status of Plaintiffs. Rather, Defendants will illicit testimony regarding the actual act of falsification.

DEFENDANTS' POSITION

To the extent Plaintiffs believe that the reason as to why he fabricated his records (here, his immigration status) is not relevant, Defendants do not dispute or disagree. Defendants intend to illicit testimony regarding the fact that Plaintiff Arias did fabricate employment documents, but not regarding his immigration status. Defendants vehemently deny Plaintiffs' baseless allegation that we seek to "intimidate" Plaintiffs and "retaliate against Plaintiffs by raising doubts about their immigration status with the Department of Homeland Security." Plaintiffs' Memo in Support, p. 2. Plaintiffs attempt to deflect from the real issue- that their client's credibility is in question in this employment case where he lied on his employment documents. Evidence of this falsification of information will be used to attack the witness's credibility and for purposes of impeachment.

Defendants are entitled to illicit testimony on trial regarding this fabrication to attack Plaintiff's credibility. Defendants do not seek introduce Plaintiffs' immigration status to the extent it does relate to the fact that employment records were fabricated. As such, Defendants do not oppose Plaintiffs' motion and do not intend on introducing evidence relating to Plaintiffs' immigration status.

Dated: Garden City, New York
August 31, 2012

Respectfully submitted,

VALLI KANE & VAGNINI
Attorneys for Defendants

/s/ Robert J. Valli, Jr.

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